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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 923,974	08 07 2001	Joe C. Worley	00-02	3557

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DAYCO PRODUCTS, LLC  
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MIAMISBURG, OH 45342

[REDACTED] EXAMINER

LEYSON, JOSEPH S

ART UNIT	PAPER NUMBER
1722	

DATE MAILED: 06 04 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)
09/923,974	WORLEY ET AL
Examiner	Art Unit
Joseph Leyson	1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 21 April 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14 and 19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 07 August 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3	6) <input type="checkbox"/> Other: _____

1. Applicant's election of Group I, claims 1-14 and 19 in Paper No. 6 filed on 21 April 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 15-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 21, 23 and 46. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. Claims 8-13 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 8-13 only further relate to the intended use of the claimed apparatus. Intended use has been continuously held

not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. Purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666. Inclusion of the material worked upon by a structure being claimed does not impart patentability to the claims, *In re Otto et al.*, 136 USPQ 458. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitation of that claimed, *Ex parte Masham*, 2 USPQ 2d 1647.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear whether a system or an apparatus is being claimed. The examiner suggests changing "system" in claim 1 to --apparatus--.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Solomon(-128).

Solomon(-128) teach a crosshead extrusion apparatus, that corresponds to the instant extrusion apparatus, which includes an extrusion housing 16 having a tapered interior wall surface (see fig. 2), an extruder die head (see fig. 2) releasably connected to the housing by bolts 36, an introduction port 37, 41 in the housing for introducing the molten material into the interior of the housing, a fixed center die module 42, 48 configured to slidably mate with the tapered interior wall surface of the housing, and means 44 for securing the fixed center die module 42, 48 in the housing. The housing includes at least one controllable temperature zone, particularly dual controllable temperature zones 34, 34 in the front part of the housing. The fixed center die module 42, 48 is configured such that molten material in the housing is divided into four (actually four and counting to six) parts (see fig. 3) providing

balanced flow of the material to the extruder die head (col. 3, lines 10-22). The fixed center die module includes a tubular member 48 having a uniform inner circumference along its longitudinal axis (fig. 2) and a plurality of raised surfaces (fig. 3) extending from and integral with the outer circumference of the tubular member 48, the plurality of raised surfaces exhibiting a frusto-conical configuration along the longitudinal axis and providing a plurality of passages between the plurality of raised surfaces such that the molten material is divided into equal parts during extrusion (col. 3, lines 10-22). The fixed center die module is configured such that material is divided into two equal parts as it goes around the tubular member 48 from the introduction port 41, and then the two equal parts are subsequently divided into four (actually four and counting to six) equal parts (see fig. 3). The configuration of the fixed center die module precludes the need for continuous die adjustment to achieve predetermined cross-section and uniform wall gauge of the product (col. 3, lines 39-59).

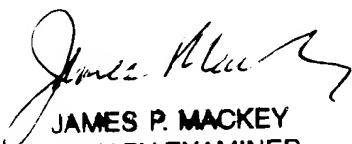
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Milliman(-568), Milliman(-941), Milliman(-945) and Guillemette et al.(062) are cited as of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jl  
June 2, 2003

  
JAMES P. MACKEY  
PRIMARY EXAMINER

6/2/03